

RULEMAKING NOTICE FORM

Notice Number	<u>2017-58</u>	Rule Number	<u>He-C 6918</u>
1. Agency Name & Address: Dept. of Health & Human Services Division of Children, Youth & Families Child Development Bureau 129 Pleasant Street Concord, NH 03301		2. RSA Authority:	<u>RSA 161:83, II(a)</u>
		3. Federal Authority:	<u></u>
		4. Type of Action:	
		Adoption	<u>X</u>
		Amendment	<u></u>
		Repeal	<u></u>
		Readoption	<u></u>
		Readoption w/amendment	<u></u>

5. Short Title: **Child Care Provider Billing and Payment Requirements**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to adopt He-C 6918 “Child Care Provider Billing and Payment Requirements.” The proposed rule consolidates definitions, billing requirements, and instructions for billing found in existing rules He-C 6910 “Employment Related Child Care” and He-C 6349 “Certification Payment Standards for Licensed and License Exempt Child Care Service Providers” which expired 3/17/17. The proposed He-C 6918 includes all billing and payment costs and benefits associated with the proposed rule He-C 6910 and the proposed new rule He-C 6912 “Preventive or Protective Child Care Scholarship” which are being proposed in separate, concurrent rulemaking proceedings.

The proposed He-C 6918 includes:

- **A new definition of “commute time,” and amends the definition of “job search;” and**
- **All forms incorporated by reference.**

The proposal includes programmatic changes including:

- **Mandatory submission of child care invoices via the web billing application as of 8/7/17;**
- **Amendment of the retention requirement for weekly attendance records from 7 years to 3 years;**
- **For protective child care only, the addition of the requirement to use Form 1864, “Protective Child Care Verification Form;”**
- **A requirement that the Department reimburse child care providers within 21 calendar days from receipt of the providers correctly completed and submitted invoice; and**
- **The addition of an annual allotment of absentee hours based on the authorized service level for the family which will allow child care scholarship to continue until the allotment has been exhausted, while reserving the child’s place in child care even if the child is absent for an allotted period of time.**

6. (b) Brief description of the groups affected:

The proposed rule affects those seeking to submit bills and be paid as a provider of child care scholarship child care.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

RULE	STATUTE TO BE IMPLEMENTED
He-C 6918.01	RSA 167:77
He-C 6918.02	RSA 161:2, XII, RSA 167:83, I(b)
He-C 6918.03	RSA 161:2, XXI, RSA 167:83, I(b)
He-C 6918.04	RSA 167:83, II(o)
He-C 6918.05	RSA 161:2, XII, RSA 167:83, II
He-C 6918.06	RSA 161:2, XV, RSA 167:17-b, I(a), RSA 167:17-c, RSA 167:58, IV; RSA 167:61-a, I(a)-(c) and (e), RSA 167:83, II(k); RSA 170-E:7, and RSA 170-E:12, V
He-C 6918.07	RSA 161:2, XII; RSA 167:83, II(a), RSA 170-G:4,a.
He-C 6918.08	RSA 167:83, II(i)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9374
		Fax#:	271-5590
		E-mail:	catherine.bernhard@dhhs.nh.gov

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

[**http://www.dhhs.nh.gov/oos/aru/comment.htm**](http://www.dhhs.nh.gov/oos/aru/comment.htm)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, June 1, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, May 25, 2017 at 3:00 p.m.**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **17:048**, dated **05/01/17**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

He-C 6918 is a new rule but includes sections taken from He-C 6910 and He-C 6349. When compared to the existing rule, He-C 6910 and the expired rule He-C 6349, the proposed new rule will increase the state general fund expenditures and have an indeterminable impact on independently-owned businesses.

2. Cite the Federal mandate. Identify the impact on state funds:

The requirements to reimburse child care providers within 21 calendar days and to pay for an annual allotment of absentee hours are based on 45 CFR 98, "The Child Care and Development Fund." Any costs associated with these mandates is attributable to the federal requirement and not the proposed rule.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The proposed rule includes a federal requirement to provide an annual allotment of absentee hours to families eligible for employment-related and preventive or child care scholarships. The proposed rule allows an eligible child's occasional absences, for reasons such as illness or unforeseen circumstances, to be paid. The Department estimates this will cost \$759,925 annually, to be paid for using a combination of federal funds and general funds found in the operating budgets for the employment-related and protective or preventive child care programs. The combined budgets for these two programs in the governor's recommended budget are \$382,202 in FY 18 and \$391.713 in FY 19.

B. To State citizens and political subdivisions:

There is a potential benefit to families that utilize work-related or preventive or protective child care scholarship programs, as the proposed paid absentee allotment will reduce out-of-pocket expenses. There is no impact on political subdivisions.

C. To independently owned businesses:

There is a potential benefit to child care providers from the federally-mandated requirement that the Department make payment within 21 days. Providers may also benefit from the addition of an annual allotment of absentee hours per child. There is also a potential benefit to providers associated with reduced administrative costs due to decreased recordkeeping requirements.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution

The proposed rule modifies an existing program or responsibility but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-C 6918, cited and to read as follows:

PART He-C 6918 CHILD CARE PROVIDER BILLING AND PAYMENT REQUIREMENTS

He-C 6918.01 Purpose. The purpose of this part is to identify the requirements to bill the department of health and human services (DHHS) and receive payment for child care services provided through the New Hampshire child care scholarship program.

He-C 6918.02 Scope. This part shall apply to licensed and license-exempt child care providers who receive financial reimbursement from the department of health and human services (DHHS) for those families utilizing employment-related, preventive or protective child care services.

He-C 6918.03 Definitions.

(a) “Assistance group” means the individuals who are residing in the same household whose needs and income are considered and combined together when determining eligibility and the amount of assistance for child care.

(b) “Authorized representative” means the person(s) who is designated or authorized by a child care provider to act on behalf of that provider in matters related to billing DHHS for child care services provided and is not the parent of a child in the provider’s care who is receiving child care scholarship.

(c) “Authorized service level” means full time, half time or part time service level based on the number of hours per week of child care according to the approved activities in He-C 6910.03(d) and He-C 6912.03(d).

(d) “Caretaker relative” means a specified relative as defined in RSA 167:78, III, namely “a specified relative, other than a parent, who provides care and parental control to a dependent child.”

(e) “Case plan” means the division for children, youth and families (DCYF) written plan for the child and the family which outlines how services will be provided, and requirements to be met by a parent receiving a protective child care scholarship, pursuant to RSA 170-G: 4, III and 42 U.S.C. 671, Part E- Federal Payments for Foster Care and Adoption Assistance 42 USC 671(a) (16) and 42 USC 675(5) (a)-(D) state plan for foster care and adoption assistance.

(f) “Child care” means the act of providing supervision, food, activity, and rest for a child for any portion of a 24-hour day, in order to promote healthy child development and assist the child’s parent(s) in preparing for, securing, or maintaining employment or employment-related education or training or for an approved activity that supports service or case plan goals.

(g) “Child care scholarship” means payment to a provider of child care services on behalf of a family who meets the eligibility criteria of He-C 6910 or He-C 6912.

(h) “Child experiencing significant special need(s)” means a child through the age of 17 who has a verified medical, physical, developmental, educational, or emotional disability requiring additional funds for accommodation or classroom adaptation in the child care setting.

(i) “Commissioner” means the commissioner of the New Hampshire department of health and human services or designee.

(j) “Commute time” means for employment related child care one hour per day in a week, during which the parent(s) travels for active participation to and from an employment related activity.

(k) “Cost share” means a DHHS determined portion of the standard rate charged as a fee to parents for child care services, based on family size and income pursuant to He-C 6910.18 and He-C 6910.19.

(l) “Department (DHHS)” means the department of health and human services of the state of New Hampshire.

(m) “Division for children, youth, and families (DCYF)” means the organizational unit of the department of health and human services that provides services to children and youth and families referred by courts pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-B, RSA 170-C and RSA 463.

(n) “Employment-related activities” means participation in an approved activity that is designed to assist parents to enter, re-enter, or remain in the workforce as described in He-C 6910.07(e).

(o) “Enrolled child care provider” means a child care provider who has met the qualifications and requirements found in He-C 6914 and is authorized to receive payment from DHHS for child care services provided. The term includes the definition of “registered provider” pursuant to RSA 170-E:6-a.

(p) “Family” means a child(ren) and an adult(s) who reside in the same household and who have a birth, foster, step, adoptive, legal guardianship, or caretaker relative relationship.

(q) “Foster Parent” means an individual who has a license or permit for foster family care, pursuant to He-C 6446.

(r) “Fraud” means “fraud” as defined in RSA 167:58, IV

(s) “Full time” means greater than 30 hours of child care per week.

(t) “Half time” means greater than 15 and equal to or less than 30 hours of child care per week.

(u) “Job search” means a 92 calendar day period:

(1) Granted at initial eligibility, during which a parent is actively seeking employment; or

(2) Granted during a 12 month eligibility period, during which a parent is given the opportunity to engage or re-engage in employment or employment related training or education when a parent has had a non-temporary cessation of employment, or employment related training or education.

(v) “Legal guardian” means an individual who is given legal authority by a court and charged with the duty to provide care, custody, and supervision of the child(ren).

(w) “Licensed” means a child care provider who has been issued a child care license to operate by the commissioner of DHHS, in accordance with RSA 170-E or has been issued a child care license to legally operate as a child care provider in accordance with the licensing requirements of a state neighboring New Hampshire.

(x) “License-exempt” means a child care provider who is not required to be licensed, in accordance with RSA 170-E, I(a), (c), (f), (g), and (h) or is not required to be licensed but can legally operate as a child care provider in accordance with the regulations of a state neighboring New Hampshire.

(y) “NH Bridges” means the automated case management, information, tracking, and reimbursement system used by the division for children, youth and families (DCYF).

(z) “New Hampshire employment program (NHEP)” means the program administered by DHHS in accordance with RSA 167:78 through RSA 167:92.

(aa) “Notification” means a written or printed document that advises:

(1) Families of:

- a. The results of eligibility determinations; and
- b. Other changes in child care scholarship; or

(2) Providers of:

- a. Changes to a family’s child care scholarship, as applicable;
- b. The maintenance of the provider’s enrollment status; and
- c. Other information related to the provider’s compliance with these rules.

(ab) “Parent” means an individual who has a birth, adoptive, or step-parent relationship to the child(ren), a foster parent as defined in (r) above, a legal guardian as defined in (w) above, or a caretaker relative as defined in (e) above.

(ac) “Part time” means 1 to 15 hours of child care per week.

(ad) "Preventive child care" means a DCYF funded program authorized by the comprehensive family support agency to prevent child abuse or neglect and to give the parent an opportunity to

participate in programs designed to teach positive parenting skills and address concerns that could lead to child abuse or neglect.

(ae) “Protective child care” means a DCYF funded program through which parents may access child care through a founded case in order to assist the parent in securing or maintaining employment, or to relieve parents of continuous child care and provide an opportunity to attend a program to correct the concerns that lead to abuse or neglect while there is an open assessment through DCYF.

(af) “Provider” means an individual or a public or private organization supplying child care services to the family and requesting enrollment for financial reimbursement from DHHS.

(ag) “Recipient” means a member of a family who meets eligibility requirements or authorization pursuant to He-C 6910 or He-C 6912 and is receiving child care scholarship from DHHS. The term includes the definition of “parent” in (ac) above.

(ah) “Redetermination” means a scheduled review of a parent’s eligibility for child care scholarship, and includes verification of all aspects of eligibility.

(ai) “Wait list” means a prioritized list of children eligible for child care scholarship who are waiting for funding to become available to receive child care scholarship.

(aj) “Weekly standard rate (WSR)” means a DHHS determined rate used to calculate a child care scholarship and cost share amounts.

He-C 6918.04 Child Care Billing and Payment Requirements.

(a) DHHS shall make child care payments on behalf of an eligible child directly to a DHHS enrolled child care provider within 21 calendar days from receipt of the provider’s correctly completed invoice based on the child’s attendance up to the authorized level of service if all of the requirements of He-C 6918 are met.

(b) Effective 8/7/17 all child care providers and authorized representatives, if any, shall be required to submit invoices via the DHHS web billing application, and shall:

- (1) Request a web billing account from DHHS by completing, signing, and submitting Form 2679 “Provider Web Billing User Account Request Form” (February 2017);
- (2) Be issued a log on and a personal identification number (PIN) by DHHS for use in accessing the web billing account; and
- (3) Neither the child care provider nor any authorized representative shall transfer his or her log on or PIN, or allow use of his or her log on or PIN by any other person.

(c) Each child care provider shall maintain weekly attendance records as described in (d) below for a period of 3 years for each week billed to DHHS.

(d) Each child care provider shall accurately document the following information on a weekly attendance record:

- (1) The name of the child care provider or program;
- (2) The date of service including the month, day, and year;
- (3) The child's first and last name;
- (4) The time of the child's arrival and departure; and
- (5) The parent's original signature, or electronic signature, including the first and last name.

(e) Child care payments in (a) above shall be made if the child care provider:

- (1) Is enrolled with the DHHS child care scholarship program pursuant to He-C 6914;
- (2) Has on a weekly basis, submitted a billing invoice for each eligible child according to (f) or (g) below, as applicable:
 - a. Where the hours present billed matches the arrival and departure times on the attendance records signed by the parent;
 - b. When the child absentee hours reflect hours the child was absent;
 - c. Where the hours billed do not include any hours beyond the child's last day in attendance; or
 - d. Where the invoice does not include fees or extra charges such as materials, activity, field trip, fees, registration fees, or late pick up charges or deposits which cover a portion of the payment; and
- (3) Is an enrolled license-exempt child care provider and has been the only person providing the child care and supervision for the time billed to DHHS.

(f) For employment-related child care, DHHS shall make payment to the provider if:

- (1) The provider or parent has submitted a completed, signed, and dated Form 1863, "Child Care Provider Verification" (February 2017);
- (2) The family was eligible for child care scholarship during the time period indicated in the child care provider's billing invoice.
- (3) The child care provider or an authorized representative completes and submits a billing invoice for each child pursuant to He-C 6918.04(b).
- (4) A handwritten signature on a billing invoice or the web billing personal identification number (PIN) shall be submitted to DHHS to certify that:
 - a. The billing was completed in accordance with this section;

b. The hours included on the invoice are one of the following:

1. Hours in which the child care services were provided; and
2. Hours the child was absent; and

c. The billing is true and accurate.

(g) For preventive or protective child care DHHS shall make payments to the provider if authorized by either:

- (1) A Form 1864 "Protective Child Care Services Verification" (February 2017) is completed by the child protection social worker (CPSW); or
- (2) A Form 1902 "Referral for Preventive Child Care Services" (October 2016) is completed by the comprehensive family support agency; and
- (3) The child was authorized for child care scholarship during the time period indicated on the child care provider billing invoice;
- (4) The provider is both a licensed child care provider and a licensed foster family home, and while providing child care for the foster child there is at least a one to one ratio between unrelated, non-household child care recipients to foster child recipients. Foster parents shall not be eligible for child care payment or assistance if they do not provide licensed child care services to children other than the foster child or other children living in their home;
- (5) The child care provider or an authorized representative completes and submits a billing invoice for each child; and
- (6) A handwritten signature on a billing invoice or the web billing personal identification number (PIN), shall submitted to DHHS shall certify that:

a. The billing was completed in accordance with this section;

b. The hours included on the invoice are one of the following:

1. Hours in which the childcare services were provided;
2. Hours the child was absent; and

c. The billing is true and accurate.

(h) Upon written request from DHHS, and within 7 business days of such request, each child care provider shall provide DHHS with weekly attendance records as described in (d) above as supplemental billing documentation.

(i) If the provider receives notification by DHHS of incorrect billing the provider shall:

- (1) Correct the billing errors and resubmit the billing invoice no later than 30 calendar days from the date of the notification;

- (2) Upon the second notification of the same rejected or returned billing invoice notification, call provider relations at DCYF at (800) 852-3345; and
 - (3) Correct the billing errors and resubmit the billing invoice within 30 calendar days of the date of the second notification.
- (j) DHHS shall not pay the billing invoice if the provider does not resubmit the billing invoice correctly in accordance with (i) above.
- (k) If DHHS determines the provider or the provider's authorized representative has repeatedly submitted the billing invoices incorrectly, DHHS shall issue a letter with the following information:
- (1) A description of the billing errors, including the type and frequency of the errors, and instructions on how to correct the billing errors;
 - (2) The required web-based training the provider shall attend within 20 business days of the date of the notification;
 - (3) How to access the mandated web-based training; and
 - (4) Notification that provider disqualification shall occur if:
 - a. Further billing errors occur after the provider has attended the mandated web-based training; or
 - b. The provider does not attend the mandated web-based training within 20 business days.
- (l) Any child care provider applying for a DHHS assistance program shall report all child care payments received as income.
- (m) A child care provider shall not be eligible to receive payments for child care services for a specific child when the provider has not:
- (1) Submitted a weekly billing invoice and been paid within the past 90 days in accordance with (e) above; or
 - (2) Submitted invoices in accordance with (i) above.
- (n) If DHHS does not pay the child care provider because the provider's billing practices are contrary to the provider agreement and He-C 6914 and He-C 6918, the provider shall forfeit the right to payment and shall not bill the parent for the cost of the child care services that could have been paid by DHHS.
- (o) DHHS shall issue to a child care provider a federal Form 1099 in January of each calendar year if the total reportable payment from all state agencies equals \$600.00 or more.
- (p) If an overpayment is received, a provider shall contact provider relations at DCYF at (800) 852-3345.

(q) A provider and a parent shall determine whether the amount the parent pays the provider each week shall include one or both of the following:

- (1) All or part of the cost share; and
- (2) All or part of the copayment which is the difference between the DHHS maximum standard rate and the provider's regular weekly fee.

He-C 6918.05 Child Care Scholarship Payment.

(a) Child care scholarship payment shall be made when children are absent such that each child shall receive a DHHS determined annual allotment of absentee hours based on the child's authorized service level that will be used whenever a child is absent until the annual allotment is exhausted.

(b) Child care providers shall be paid a weekly standard rate based on the child care scholarship standard rate methodology pursuant to He-C 6910.18 and 6912.08.

(c) The employment related child care scholarship cost share for each family shall be determined according to He-C 6910.19.

(d) The child care scholarship payments established pursuant to He-C 6910 and He-C 6912 are contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments hereunder in excess of such available appropriated funds.

He-C 6918.06 Provider Disqualification. Any enrolled licensed or license-exempt child care provider shall be disqualified if he or she has:

(a) Submitted a billing invoice, including, but not limited to the following:

- (1) Billing for child care services not provided; or
- (2) Billing for child care services provided:
 - a. By another person or provider; or
 - b. While not in compliance with child care licensing requirements under He-C 4002; or

(b) Either:

- (1) Not provided the supporting billing documentation as required by He-C 6918.04(h); or
- (2) Provided information on the supporting billing documentation that is false or misleading, including weekly attendance records;

(c) Not met the criteria in He-C 6914.08(c)(2), but has been determined to have repeated billing errors after receiving a letter from the DHHS identifying the errors and correct billing procedures pursuant to He-C 6918.04(k), and the provider:

- (1) Failed to complete the mandated web-based training; or
- (2) Completed the mandated web-based training but continued to submit the billing invoices or attendance records incorrectly; or
- (d) For any other reason identified in He-C 6914.08(c) or (d).

He-C 6918.07 Appeals.

(a) A provider or parent may appeal a decision made by DHHS within 10 business days of the receipt of the notification when:

- (1) The payment has been withheld; or
- (2) The payment amount is disputed.
- (b) The request for an appeal shall be made in accordance with He-C 200.

He-C 6918.08 Recoupment of Overpayments.

- (a) An overpayment shall have occurred under one of the following conditions:
 - (1) When a provider or parent requests continuation of a child care scholarship according to He-C 6918.07, pending the outcome of an appeal and the appeal decision upholds the DHHS proposed action; or
 - (2) For any other reason that a provider received an incorrect higher amount of payment than he or she should have received.
- (b) When an overpayment has occurred, DHHS shall determine the cause in accordance with (c), (e), (h), and (i) below.
- (c) The overpayment shall be solely the fault of the provider when the parent is in compliance with the provisions of He-C 6910 and He-C 6912 and the provider has been paid for child care services:
 - (1) Not provided; or
 - (2) That were not provided in compliance with He-C 6914, He-C 6918 and the provider agreement.
- (d) If the overpayment has been determined to be solely the fault of the provider, the provider shall receive a notification that an overpayment has occurred and that repayment shall be made in accordance with (j) below.
- (e) The overpayment shall be solely the fault of the parent if:
 - (1) The provider is in compliance with He-C 6914 and He-C 6918 and the provider agreement;
 - (2) The parent has not complied with the provisions of He-C 6910 or He-C 6912; and

(3) The provider has no knowledge that the parent was out of compliance with the provisions of He-C 6910 or He-C 6912.

(f) If an overpayment has been determined to be solely the fault of the parent, the parent shall receive notification that an overpayment has occurred and payments shall be recouped in accordance with RSA 167:17-a.

(g) The overpayment shall be the fault of both the parent and provider when:

(1) Both parties are out of compliance with He-C 6910, He-C 6912, He-C 6914 and He-C 6918; or

(2) Both parties were in collusion, meaning they agreed to actions with the understanding that their actions constituted a violation of the provisions of these rules, He-C 6910, He-C 6912, He-C 6914 or He-C 6918.

(h) If the overpayment is determined to be the fault of both the parent and the provider, notification shall be sent to both parties, and DHHS shall initiate further action such as recoupment of payment from either or both the parent and provider.

(i) If the provider or parent has opted to continue to receive a child care scholarship pending the outcome of the appeal and the appeal decision upholds the DHHS proposed action as in (a)(1) above, the provider or parent requesting the continuing child care scholarship shall be the cause of the overpayment and shall be responsible for the repayment.

(j) Within 30 days of notification in accordance with (d) above, the provider shall agree to do one of the following:

(1) Repay the overpayment in full;

(2) Choose to repay at a rate no lower than 10 percent of the full amount of child care payments owed per month until the overpayment is repaid in full whether the provider is currently enrolled or no longer enrolled; or

(3) For a currently enrolled child care provider, choose to have the total amount of child care payment withheld from future DHHS child care payments to the provider, beginning with the next scheduled payment after an agreement has been reached or after the 30 days has elapsed, whichever occurs first, until the overpayment is repaid in full.

(k) If the provider fails to comply with (j) above, then the overpayment shall be recouped in full beginning with the next scheduled payment to the provider after the 30 days has elapsed, or for as long as is necessary to recoup the overpayment in full.

APPENDIX

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